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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,623	02/22/2002	Yoichiro Tanaka	219861USOPCT	7766
22850	7590	11/19/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER MERCIER, MELISSA S	
			ART UNIT	PAPER NUMBER
			1615	
			NOTIFICATION DATE	DELIVERY MODE
			11/19/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/049,623	<b>Applicant(s)</b> TANAKA ET AL.	
	<b>Examiner</b> MELISSA S. MERCIER	<b>Art Unit</b> 1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8,9,27,28 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8,9,27,28 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 14, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-9, 27-28, and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimijima et al. (JP59046125) in view of Bayerlein et al. (US Patent 4,826,700).

Kimijima describes a microcapsule characterized by freezing, grinding, and powdering a core substance which comprises a liquid and powdery form that may be used to encapsulate cosmetics (page 2). The micro encapsulation is accomplished by freezing the core substance using the coolness of liquid nitrogen or the like and powdered in this state (page 5). The examiner has interpreted this to include freeze shattering. When the flow ability of the microcapsule needs to be enhanced, a small amount of a fine powder having an average particle size of about 100um or less can be

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added (page 5). It is additionally disclosed it is necessary to select a hydrophobic fine powder if the core substance is hydrophilic, and it is necessary to select a hydrophilic fine powder when the core substance is hydrophobic (page 5).

Example I discloses the use of Aerosil R972 as the coating powder (page 9). As noted in the specification, this particular powder is fumed silicic acid anhydride treated by a hydrophobicizing agent, DDS (page 8, lines 15-20), which meets the limitations of claims 37-40.

The core can be thickened or gelled by preadding a filler, thickener, gelling agent or the like (page 8).

Regarding claims 27 and 33, a fine powder having a particle size of one tenth or less is used (page 5).

Regarding claims 29 and 34, the resulting microcapsules are a powdery powder having a good flow ability even at room temperature, and the powder of the core substance is covered completely with a fine powder (page 7), which the examiner has interpreted to be powdered cores.

Kimijima does not disclose the gelling agent to thicken the core is agar, gelatin, carrageenan, gellan gum, or magnesium sodium silicate.

Bayerlein discloses the use of gelling agents used to achieve the desired consistency or viscosity. Polysaccharides, such as gelatin, and galactans, such as carrageenan and agar are disclosed as suitable gelling agents for cosmetic formulations (column 1, lines 8-15, 56-57).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected any gellants or gel-forming agent with an expectation of success that any gelling agent known to be useful in the cosmetic would render similar results. Furthermore, there is no showing the particular gelling agents have any unexpected results over what was already available in the prior art. In particular, Bayerlein discloses polysaccharides are water soluble, or strongly swellable substances, which in aqueous systems give colloidal, more or less highly viscous solutions or dispersions having plastic or pseudo-plastic flow, providing functional properties desired, such as thickening action, water-binding capability, stabilization of suspensions and emulsions in polyphase systems, and gel formation (column 1, lines 16-24).

### ***Response to Arguments***

Applicant's arguments and Amended claims, filed August 14, 2008, have been fully considered and are persuasive. The rejections of record over Tanaka and Reyes in view of Deubzer have been withdrawn. The above, Kimijima et al. (JP59046125) in view of Bayerlein et al. (US Patent 4,826,700) has now been applied. It is acknowledged that Kimijima has been previously applied and withdrawn (see Non-final rejection dated June 14, 2006 and Applicants remarks dated October 13, 2006), however, upon further consideration, it has been determined that Applicants arguments regarding the lack of a teaching of hydrophilic particles treated with a hydrophobicizing agent as set forth in the claims coating the aqueous gel cores is taught in Example 1, as discussed in the body of the rejection above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615